

CALIFORNIA COASTAL COMMISSION

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Commission Action:



STAFF REPORT: APPEAL
SUBSTANTIAL ISSUE AND DE NOVO HEARING

LOCAL GOVERNMENT: City of Long Beach

LOCAL DECISION: Approval with Conditions

APPEAL NUMBER: A-5-LOB-98-336

APPLICANT: Selleck Development Group, Inc.

AGENT: Joel Miller, Psomas and Associates

PROJECT LOCATION: 6500 E. Pacific Coast Highway, City of Long Beach,
Los Angeles County.

PROJECT DESCRIPTION: Construction of a 67,930 square foot retail commercial
development with 340 on-site parking spaces.

APPELLANTS: Coastal Commissioners Sara Wan and Shirley Dettloff

SUMMARY OF STAFF RECOMMENDATION

The staff recommends (**motion on page 6**) that the Commission, after public hearing, determine that **a substantial issue exists** with respect to the grounds on which the appeal has been filed for the following reasons: The project, as approved by the City of Long Beach, is not consistent with the certified LCP standards relating to allowable uses and building heights, and does not analyze or mitigate the project's impacts on wetland habitat area that currently occupies the site.

Staff further recommends (**resolution on page 12**) that the Commission, after a public **de novo** hearing, **approve the proposed development with conditions** that require mitigation of the project's impacts on wetland habitat through implementation of an on-site replacement project, compliance with effective certification of Long Beach LCP Amendment No. 2-98B, and control of stormwater runoff from the site both during construction and after completion.

SUBSTANTIVE FILE DOCUMENTS:

1. Local Coastal Development Permit No. 9702-18 (Marina Shores).
2. City of Long Beach Certified Local Coastal Program.
3. City of Long Beach Local Coastal Program Amendment No. 2-98B.
4. Environmental Impact Report (EIR 25-97) "Marina Shores", SCH#97081068.
5. Conceptual Mitigation Plan for Marina Shores by Glenn Lukos Associates, Inc. September 14, 1998.

STAFF NOTE:

This staff report and recommendation is written with the assumption that the Commission would approve **City of Long Beach LCP Amendment No. 2-98B** with the suggested modifications that would add the necessary wetland protection provisions into the certified LCP.

I. APPELLANTS' CONTENTIONS

City of Long Beach Local Coastal Development Permit No. 9702-18 was approved with conditions for the construction of a 67,930 square foot commercial development with 340 on-site parking spaces (Exhibit #5). The project site is a vacant six acre parcel situated on the seaward side of Pacific Coast Highway in southeast Long Beach (Exhibit #2). The City's approval of the proposed project was appealed by two Coastal Commissioners on August 14, 1998. The Commissioners' appeal contends that:

- The local coastal development permit does not analyze or mitigate the proposed project's impacts on wetland habitat in relation to the standards of the certified LCP.
- The proposed project does not conform to the open space, setback, curb cut, and height restrictions contained in the certified LCP.
- The certified LCP does not list retail uses as an allowable use on the project site.
- The local coastal development permit does not adequately address the parking and traffic impacts of the project in relation to the standards of the certified LCP.
- The local coastal development permit does not adequately address the project's impacts on scenic resources in relation to the standards of the certified LCP.

II. LOCAL GOVERNMENT ACTION

On February 28, 1997, Selleck Development Group, Inc. submitted an application to the City of Long Beach to construct a nautical themed commercial retail center anchored by a Hughes Supermarket and a freestanding full-service restaurant (Exhibits #3&4). The proposed shopping center project, referred to as "Marina Shores", is located on the seaward side of Pacific Coast Highway in southeast Long Beach (Exhibit #2). The project site falls within Subarea 29 of the City's Southeast Area Development and Improvement Plan (SEADIP).

The City of Long Beach processed Local Coastal Development Permit No. 9702-18 concurrently with a project-driven LCP amendment for the proposed project [*See LCP Amendment No. 2-98B*]. The proposed LCP amendment would change the land use, height, and curb cut standards for Subarea 29 of SEADIP in order to accommodate the proposed project. Specifically, the LCP amendment would: 1) add retail uses to the list of allowable uses for SEADIP Subarea 29 which currently allows only commercial office, restaurants, and commercial recreation uses; 2) allow architectural features to exceed the 35 foot height limit by eight feet (up to 43 feet); and 3) allow curb cuts on Pacific Coast Highway and Studebaker Road subject to the approval of the City Traffic Engineer and/or CALTRANS.

The City Site Plan Review Committee granted preliminary approval of the project on March 19, 1997. Subsequently, the proposed project and the proposed LCP amendment were the subject of public hearings before both the City Planning Commission and the City Council. The City Planning Commission held three public hearings for the proposed project on June 5, 1997, June 19, 1997, and January 15, 1998. The City Council held two public hearings for the proposed project July 15, 1997 and March 17, 1998. Finally, on March 17, 1998, the City Council granted the final City approval of Local Coastal Development Permit No. 9702-18, the associated LCP amendment, and a standards variance for the proposed project (Exhibit #5).

In addition, the City prepared Environmental Impact Report EIR 25-97 (SCH#97081068) in order to address the cumulative impacts of future development and the proposed project in southeast Long Beach. The EIR was certified by the Planning Commission on January 15, 1998.

The City's Notice of Final Action for Local Coastal Development Permit No. 9702-18 was received in the Commission's Long Beach office on April 3, 1998 (Exhibit #5). The Long Beach City Council had determined that the project site contained no wetlands. Because the project site is located outside of the Commission's mapped appealable area, the local permit action was **not** noticed by the City as being appealable to the Commission. The Commission's mapped appealable area extends inland to Marina Drive, the first public road inland from the sea. The project site is located on the inland side of Marina Drive (Exhibit #2). Because the Commission had not received notice of final action on appealable development, no appeal period was established.

At its August 13, 1998 public hearing on Long Beach LCP Amendment No. 2-98B, however, the Commission learned that Local Coastal Development Permit No. 9702-18 is appealable under Section 30603(a)(2) of the Coastal Act due to the fact that a wetland occupies a portion of the

project site. Thus, at its meeting of August 13, 1998, the Commission effectively received the notice of final local notice of appealable development, and the Commission's ten working-day appeal period was established. On August 14, 1998, Coastal Commissioners Sara Wan and Shirley Dettloff appealed Local Coastal Development Permit No. 9702-18.

Pursuant to Section 30621 of the Coastal Act, a hearing on a local coastal development permit appeal shall be set no later than 49 days after the date on which the appeal is filed with the Commission. The applicant, Dan Selleck, waived the 49 day requirement and requested that the hearing be scheduled for the Commission's October 1998 meeting in Oceanside instead of the September 1998 meeting in Eureka.

At this point, the Commission may decide that the appellants' contentions raise no substantial issue of conformity with the Coastal Act, in which case the action of the local government stands, **or** the Commission may find that a substantial issue exists between the action of the local government and either the certified LCP or the public access policies of the Coastal Act. If the **Commission finds substantial issue**, then the proposed project will be heard as a **de novo permit** request. Section 13321 specifies that de novo actions will be heard according to the procedures that apply to other coastal development permits, as outlined in Section 13114 of the California Code of Regulations.

III. APPEAL PROCEDURES

After certification of a Local Coastal Program (LCP), the Coastal Act provides for limited appeals to the Coastal Commission of certain local government actions on coastal development permits. Pursuant to Section 30603 of the Coastal Act, developments approved by cities or counties may be appealed if they are located within the mapped appealable areas, such as those located between the sea and the first public road paralleling the sea, or within three hundred feet of the inland extent of any beach, mean high tide line, or the top of the seaward face of a coastal bluff. Any development that is located on tidelands, submerged lands, public trust lands, within one hundred feet of any wetland, estuary, or stream may also be appealed to the Commission. Furthermore, developments approved by counties may be appealed if they are not designated "principal permitted use" under the certified Local Coastal Program. Finally, developments which constitute major public works or major energy facilities may be appealed, whether approved or denied by the city or county. [Coastal Act Section 30603(a)].

Section 30603(a) of the Coastal Act identifies which types of development are appealable:

- (a) After certification of its Local Coastal Program, an action taken by a local government on a Coastal Development Permit application may be appealed to the Commission for only the following types of developments:
 - (1) Developments approved by the local government between the sea and the first public road paralleling the sea or within 300 feet of the inland extent of any

beach or of the mean high tide line of the sea where there is no beach, whichever is greatest.

- (2) Developments approved by the local government not included within paragraph (1) of this subdivision that are located on tidelands, submerged lands, public trust lands, within 100 feet of any wetland, estuary, stream, or within 300 feet of the top of the seaward face of any coastal bluff.

The City of Long Beach Local Coastal Program was certified in July 22, 1980. The City approval of the proposed project is appealable because it is located within one hundred feet of a wetland. In fact, a wetland exists on the site of the proposed development and will be directly affected by the City-approved project.

The grounds for appeals in the subject area are listed in **Section 30603(b)(1) of the Coastal Act**:

The grounds for an appeal pursuant to subdivision (a) shall be limited to an allegation that the development does not conform to the standards set forth in the certified Local Coastal Program or the public access policies set forth in this division.

The action currently before the Commission is to find whether there is a "**substantial issue**" or "**no substantial issue**" regarding the local approval of the proposed project. Section 30625(b)(2) of the Coastal Act requires a regular (**de novo**) hearing of the appealed project unless the Commission determines that "no substantial issue" exists with respect to the grounds for appeal [Section 30603(b)].

If Commission staff recommends a finding of "**substantial issue**", and there is no motion from the Commission to find "no substantial issue", the substantial issue question will be considered moot, and the Commission will **proceed to the de novo public hearing** on the merits of the project. On the other hand, if the Commission decides to hear arguments and vote on the substantial issue question, proponents and opponents will have three minutes per side to address whether the appeal raises a substantial issue. The only persons qualified to testify before the Commission at this stage of the appeal process are the applicant, persons who opposed the application before the local government (or their representatives), and the local government. Testimony from other persons must be submitted in writing. The Commission will then vote on the "substantial issue" matter. It takes a majority of Commissioners present to find that no substantial issue is raised by the local approval of the project.

If a majority of the Commission votes that "**no substantial issue**" exists with respect to the approval of the project by the local government, then the action of the local government stands and is final. If the Commission votes that a "**substantial issue**" does exist, then the Commission will proceed to the **de novo public hearing** on the merits of the project and the locally approved Coastal Development Permit is not effective.

Pursuant to Section 30604(b) of the Coastal Act, a de novo public hearing on the merits of the project must utilize the certified Local Coastal Program as the standard of review. Sections 13110-13120 of the California Code of Regulations further explain the appeal hearing process.

IV. STAFF RECOMMENDATION ON SUBSTANTIAL ISSUE

The staff recommends that the Commission determine that **a substantial issue exists** with respect to the conformity of the project with the policies of the City of Long Beach certified Local Coastal Program, pursuant to Public Resources Code Section 30625.

MOTION. Staff recommends a **NO** vote on the following motion:

I move that the Commission determine that Appeal No. A-5-LOB-98-336 raises NO substantial issue with respect to the grounds on which the appeal has been filed.

A majority of the Commissioners present is required to pass the motion.

V. FINDINGS AND DECLARATIONS

The Commission hereby finds and declares:

A. Project Description

The approved project involves the development of a vacant six acre parcel with a highway oriented shopping center with a nautical theme (Exhibits #3&4). The site is in southeast Long Beach, one block inland of the Alamitos Bay Marina, at the northwest corner of Pacific Coast Highway and Studebaker Road (Exhibit #2). Vehicular access is proposed from both Pacific Coast Highway and Marina Drive.

The approved “Marina Shores” shopping center is comprised of two large retail structures and a freestanding restaurant to be constructed around a common parking area with 340 parking spaces (Exhibit #3). The rooflines of the three proposed commercial structures vary from 24 to 34 feet in height, with architectural towers extending up to 43 feet above grade (Exhibit #4). The City-approval permits approximately 61,000 square feet of retail floor area and one 6,600 square foot restaurant. A seven-foot wide dedication of the applicant’s property is provided along the Pacific Coast Highway frontage as a condition of the City’s approval in order to provide additional right-of-way for the construction of a combined sidewalk and bicycle path.

The project site falls within Subarea 29 of SEADIP (Southeast Area Development and Improvement Plan), a specific plan that covers the southeast portion of the City of Long Beach. SEADIP Subarea 29 is located within the geographic area included within the City of Long Beach certified LCP. The parcel situated immediately south of the project site on Pacific Coast Highway, also within SEADIP Subarea 29, is developed with an office building. The Seaport Marina Hotel occupies the parcel to the north of the project. The closest beach is located about a mile west of the site in the City of Seal Beach (Exhibit #2).

VI. SUBSTANTIAL ISSUE ANALYSIS

As stated in Section III of this report, after certification of its Local Coastal Program a local coastal development permit issued by the local government may be appealed to the Commission on the grounds that it does not conform to the certified Local Coastal Program or the public access policies of the Coastal Act. The Commission must then decide whether a substantial issue exists in order to hear the appeal.

In this case, staff is recommending that the Commission determine that **a substantial issue exists** with the City-approved permit on the grounds that the project, as approved by the City of Long Beach, is not consistent with the certified LCP standards relating to allowable uses and building heights, and does not analyze or mitigate the project's impacts on the wetland habitat area that currently occupies the site.

A. Allowable Uses

A substantial issue exists with the City-approved permit on the grounds that the project, as approved by the City of Long Beach, is not consistent with the certified LCP standards relating to allowable uses on the project site. The approved project, located north of Studebaker Road, includes 61,000 square feet of retail commercial uses and a 6,550 square foot restaurant. The certified LCP states that the following commercial uses may be permitted in SEADIP Subarea 29 where the project is located:

SUBAREA 29

Use: Commercial office, restaurants and commercial recreation.

Restaurant uses shall be permitted only south of Studebaker Road.

The City-approved permit allows retail uses and a restaurant north of Studebaker Road. The certified LCP does not permit retail uses in Subarea 29, or restaurants north of Studebaker Road as approved by the City permit. Therefore, a substantial issue exists with the City-approved permit on the grounds that the project, as approved by the City of Long Beach, is not consistent with the certified LCP standards relating to allowable uses on the project site.

B. Building Height

A substantial issue also exists with the City-approved permit on the grounds that the project, as approved by the City of Long Beach, is not consistent with the certified LCP standards relating to building heights. The rooflines of the City-approved commercial structures vary from 24 to 34 feet in height, with architectural towers extending up to 43 feet above grade (Exhibit #4). The certified LCP states that maximum height of non-residential buildings shall be 35 feet. The certified LCP standard states:

The maximum height of buildings shall be 30 feet for residential and 35 feet for non-residential uses, unless otherwise provided herein.

The City-approved permit allows portions of the structures to exceed the 35-foot height limit, up to 43 feet. Therefore, a substantial issue exists with the City-approved permit on the grounds that the project, as approved by the City of Long Beach, is not consistent with the certified LCP standards relating to building height.

C. Wetlands

The most controversial issue addressed by the City during the local hearings for Local Coastal Development Permit No. 9702-18 was the issue of project impacts on wetland habitat. The City did address the question of whether or not any wetlands exist on the site of the proposed 67,930 square foot retail/commercial shopping center approved by Local Coastal Development Permit No. 9702-18 (Exhibits #3&4). Ultimately, the City determined that no wetlands exist on the site. Because the City found that no wetlands exist, it did not take the next step to review the project for compliance with any certified wetland policies that may or may not be contained in the certified LCP. If the City approval stands, the wetlands on the site will be eliminated by the construction of the proposed project. The City permit does not require any avoidance or mitigation for impacts to the wetlands.

On August 13, 1998, the Coastal Commission determined that **wetlands do exist** on the project site. At the heart of the wetland question is whether the vegetation and ponding of water on the project site since it was graded in 1993 qualifies as a wetland that is protected by the Coastal Act. The project applicant and the City of Long Beach found that wetland vegetation and water ponding occur on the site, but that the water and the vegetation does not qualify as a wetland.

According to the applicant's consultants, the site supported wetlands until 1928 when the site and surrounding areas were filled (Exhibit #5). Chevron operated a fuel refinery on the entire site from 1928 to the mid 1970's. The refinery was then demolished. In 1993, the soils on the site were excavated and remediated in order to remove contaminants that were discharged from the refinery. The site was recontoured to its existing topography and a catch basin was graded at the southeast corner of the site which allows water to pond. There are no records of any coastal development

permits ever issued by the City or Commission for the remediation or development of the site prior to 1998.

Currently, the site has a depression at the southeast corner that collects drainage from the site and surrounding areas. During the past several winters the site has contained a pond that has attracted several bird species to the site. The EIR for the project lists observed bird species as: American Kestrel, Rock Dove, House Finch, European Starling, Western Gull, American Crow, Ring-billed Gull, Great Blue Heron, and Mallard Duck. The size of the pond varies in response to the levels of rainfall and evaporation during each season. In the past, Commission staff has observed pumps at the site pumping water out of the pond and into the storm drain.

As part of the EIR process, the applicant's consultant conducted its own wetlands determination and submitted it to the City (Exhibit #5). The consultant, Glenn Lukos Associates, reports that the site is partially inundated during the rainy season and that the site supports scattered native hydrophytes (wetland plants) including saltgrass (*Distichlis spicata*), alkali heath (*Frankenia salina*), heliotrope (*Heliotropium curassivicum*), pickle weed (*Salicornia virginica*), and alkali bulrush (*Scirpus maritimus*). The site also supports a population of southern tarplant (*Hemizonia parryi* var. *australis*).

The conclusion of Glenn Lukos and Associates, which is included in the certified EIR for the project, is that the site does not qualify as a wetland under the jurisdiction of the U.S. Army Corps of Engineers or the California Department of Fish and Game. Based on the consultants report, the City Council found that no wetland exists on the site and approved Local Coastal Development Permit No. 9702-18 for the construction of a shopping center on the site (Exhibits #3&4). Because the City found that no wetland exists on the site, Local Coastal Development Permit No. 9702-18 does not require the implementation of any wetland avoidance or mitigation measures, and the local coastal development permit was not noticed by the City as being appealable to the Commission.

The California Department of Fish and Game, however, was not consulted until after the City had already approved Local Coastal Development Permit No. 9702-18. Subsequent to the City's April 20, 1998 submittal of this LCP amendment request, both the applicant and Commission staff requested that the California Department of Fish and Game issue an opinion on the matter (Exhibit #6). In June 1998, after visiting the project site, a California Department of Fish and Game staff member estimated that approximately .02 acres of "potential" wetland habitat exists on the site in the form of scattered native hydrophytes (wetland plants) including saltgrass (*Distichlis spicata*), alkali heath (*Frankenia salina*), heliotrope (*Heliotropium curassivicum*), pickle weed (*Salicornia virginica*), and alkali bulrush (*Scirpus maritimus*). However, because of the wetland's small size, low biological productivity, location, and recent history, the California Department of Fish and Game is reticent to issue a determination that an "actual" wetland exists on the site. It has been referred to only as a "potential wetland".

Although there is no definition of “potential wetland”, the Coastal Commission’s definition of a wetland is clear. The Coastal Commission relies on Section 30121 of the Coastal Act when making a wetland determination.

Section 30121 of the Coastal Act states:

"Wetland" means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

This is the definition upon which the Commission relies to identify "wetlands." The definition refers to lands "...which may be covered periodically or permanently with shallow water..." However, due to highly variable environmental conditions along the length of the California coast, wetlands may include a variety of different types of habitat area. For this reason, some wetlands may not be readily identifiable by simple means. The Commission's Statewide Interpretive Guidelines provide guidance for the sometimes difficult decision whether a site is a wetland. The Commission's Statewide Interpretive Guidelines state that the Commission also relies on the presence of hydrophytes and/or presence of hydric soils to make a wetlands determination. The presence of **any one** of the three conditions (water, hydrophytes or hydric soils) can result in a determination that a wetland is present. The California Department of Fish and Game typically provides the Commission with the expertise required in such a determination.

Moreover, Section 13577(b) of the Commission’s regulations specifically identifies the criteria for determining the precise boundary of a wetland for purposes of appeal under Section 30603 of the Coastal Act. **Section 13577(b)** states that:

Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or support the growth of hydrophytes, and shall include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats.

In this case, the Commission determined at the August 13, 1998 opening of the public hearing for Long Beach LCP Amendment No. 2-98B that, according to the Commission’s definition of wetlands, **a wetland does exist** on the site of the proposed development in SEADIP Subarea 29. The Commission’s finding that a wetland exists on the site is based on the evidence provided by the applicant and City, and quantified by the California Department of Fish and Game, that both water ponding and hydrophytes have been documented on the project site (See Exhibit #5 p.2). There is no dispute over the evidence that both water and hydrophytes have been found on the site. The only dispute is over the conclusion of whether the site contains a wetland.

The Commission resolves the dispute over the significance which should be attached the presence of water and hydrophytes on site consistent with the definition of wetland contained in Section 30121 of the Coastal Act and Section 13577(b) stated above. Consistent with those provisions, given the undisputed existence of hydrophytes, the Commission finds that **wetlands do exist** on the project site.

Pursuant to Section 30603 of the Coastal Act and Section 13577 of the California Code of Regulations, all areas within one hundred feet of a wetland are included within the Commission's appeal jurisdiction. Therefore, the existence of a wetland on the project site makes the local coastal development permit appealable to the Commission, even though the site may not have contained a wetland when the appeal jurisdiction map was certified in 1980 as part of the LCP certification process.

One basis for the appeal is that the City-approved permit does not analyze the proposed project's impacts on the wetland in relation to certified wetland standards. The City did not analyze the impacts on the wetlands because it had determined that no wetlands exist on the site. Therefore, staff recommends that the Commission find that a substantial issue exists with the approval of Local Coastal Development Permit No. 9702-18 on the grounds that it allows development in wetlands without requiring any type of avoidance or mitigation measures.

D. Other Issues

A substantial issue also exists with the City-approved permit on the grounds that the local coastal development permit does not adequately address the issues of scenic resources, parking, and traffic impacts in relation to the standards of the certified LCP. The EIR for the project does address in depth the issues of scenic resources, parking, and traffic impacts. The City-approved local coastal development permit does not address those issues.

STAFF RECOMMENDATION ON THE DE NOVO HEARING

STAFF NOTE:

The adoption of the staff recommendation for insertion of a wetland policy into the certified LCP as part of LCP Amendment No. 2-98B will rectify the missing wetland provisions in the LCP. The Commission will not act on Appeal No. A-5-LOB-98-336 (Marina Shores) until it takes action on LCP Amendment No. 2-98B. The Commission will then review the proposed shopping center project under the standards and policies of the LCP as amended, including the new provisions that relate to development in or near wetlands. The Commission's de novo permit approval will be conditioned on the newly amended LCP as modified becoming effectively certified.

Staff recommends that the Commission adopt the following resolution:

I. Approval with Conditions

The Commission hereby grants, subject to the conditions below, a permit for the proposed development on the grounds that the development, as conditioned, will be in conformity with the provisions of the City of Long Beach Local Coastal Program if modified according to the Commission's action on LCP Amendment No. 2-98B, that the development will not have any significant adverse effects on the environment within the meaning of the California Environmental Quality Act.

II. Standard Conditions

1. Notice of Receipt and Acknowledgment. The permit is not valid and development shall not commence until a copy of the permit, signed by the permittee or authorized agent, acknowledging receipt of the permit and acceptance of the terms and conditions, is returned to the Commission office.
2. Expiration. If development has not commenced, the permit will expire two years from the date this permit is reported to the Commission. Development shall be pursued in a diligent manner and completed in a reasonable period of time. Application for extension of the permit must be made prior to the expiration date.
3. Compliance. All development must occur in strict compliance with the proposal as set forth in the application for permit, subject to any special conditions set forth below. Any deviation from the approved plans must be reviewed and approved by the staff and may require Commission approval.

4. Interpretation. Any questions of intent or interpretation of any condition will be resolved by the Executive Director or the Commission.
5. Inspections. The Commission staff shall be allowed to inspect the site and the project during its development, subject to 24-hour advance notice.
6. Assignment. The permit may be assigned to any qualified person, provided assignee files with the Commission an affidavit accepting all terms and conditions of the permit.
7. Terms and Conditions Run with the Land. These terms and conditions shall be perpetual, and it is the intention of the Commission and the permittee to bind all future owners and possessors of the subject property to the terms and conditions.

III. Special Conditions

1. Compliance with Effective Certification of LCP Amendment No. 2-98B

Approval of the coastal development permit is conditioned upon the effective certification of Long Beach LCP Amendment No. 2-98B. Accordingly, prior to issuance of the coastal development permit, the applicant shall obtain a written statement of the Executive Director of the Coastal Commission confirming that LCP Amendment No. 2-98B has been effectively certified in accordance with California Code of Regulations, Title 14, Section 13544.

2. Conditions Imposed by Local Government

This action has no effect on conditions imposed by a local government pursuant to an authority other than the Coastal Act.

3. Wetland Mitigation Project

- a) The applicant shall construct, monitor and maintain the proposed on-site wetland habitat mitigation project consistent with the standards contained in the "Conceptual Mitigation Plan for Marina Shores by Glenn Lukos Associates, Inc. September 14, 1998 (Exhibit #8), except as modified herein.
- b) The implementation of the site preparation and planting plan for the proposed wetland habitat mitigation project shall commence prior to or simultaneous with the construction of the proposed shopping center. The .05 acre wetland habitat mitigation area shall be fenced-off during the construction of the proposed shopping center to protect it from disturbance. Once the site preparation has commenced for the wetland habitat mitigation project, the planting of the wetland habitat mitigation site shall proceed continuously until it is completed in conformance with the approved plan.

- c) The three-year monitoring period proposed by the “Conceptual Mitigation Plan for Marina Shores by Glenn Lukos Associates, Inc. September 14, 1998 (Exhibit #8) shall commence upon completion of the first planting of the wetland habitat mitigation site. The applicant shall notify the Executive Director upon completion of the first planting of the wetland habitat mitigation site.
- d) Upon completion of the first year of the monitoring period, and annually thereafter, the applicant shall submit to the Executive Director a report that documents the implementation of the planting and monitoring plans and also documents the status of the habitat mitigation project in relation to the performance criteria contained in the “Conceptual Mitigation Plan for Marina Shores by Glenn Lukos Associates, Inc. September 14, 1998 (Exhibit #8).
- e) Any additional work or modifications to the habitat mitigation project which are necessary to meet the performance criteria contained in the “Conceptual Mitigation Plan for Marina Shores by Glenn Lukos Associates, Inc. September 14, 1998 (Exhibit #8) shall be submitted to the Executive Director. Any change in the approved wetland habitat mitigation project shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.
- f) The applicant shall be responsible for the ongoing maintenance of the wetland habitat mitigation project and site. The required maintenance shall include adequate irrigation, regular cleaning, re-planting, and trash pick-up.

4. Siltation Control

Prior to the issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, an erosion control and siltation prevention plan which controls erosion from the construction site, and prevents silt from the construction site from entering the storm drain during construction of the proposed shopping center and wetland habitat mitigation project. The plan shall conform to the standards of the California Regional Water Quality Control Board and the U.S. Army Corps of Engineers. The approved plan shall be implemented during construction of the proposed project.

5. Drainage Plan

Prior to issuance of the coastal development permit, the applicant shall submit, for the review and approval of the Executive Director, a drainage plan for the proposed shopping center and its parking areas that incorporates best management practices (BMP's) for reducing the volume of runoff and pollutants which leave the project site and enter the storm drain system. The drainage plan shall incorporate the following: landscaped buffers, catch

basins to collect litter, trash racks or bars to filter runoff, grease and oil separators or filters, and provisions for regular scheduled cleaning of paved parking lot surfaces and catch basins. The drainage plan may include other measures as well. The permittee shall implement the approved drainage plan on an ongoing and permanent basis.

6. Restaurant

Prior to construction of the restaurant proposed at the southeast corner of the project site, the applicant shall submit plans for the review and approval of the Executive Director. The restaurant plans shall conform with the site plan approved by this coastal development permit and shall not exceed 35 feet in height or contain more than 6,550 square feet in gross floor area. A drive-through restaurant is not permitted by this permit. Any modifications to the proposed restaurant shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

IV. FINDINGS AND DECLARATIONS FOR DE NOVO HEARING

The Commission finds and declares as follows:

A. Revised De Novo Project Description

The applicant proposes to construct a nautical themed commercial retail center on a vacant six acre parcel located on the seaward side of Pacific Coast Highway in southeast Long Beach (Exhibit #2). The proposed “Marina Shores” project has been slightly revised since the City reviewed and approved the proposal in 1997 and early 1998. Consequently, the Commission will be considering a revised project description in the de novo portion of the appeal hearing.

The proposed shopping center is still comprised of two large retail structures and a freestanding restaurant to be constructed around a common parking area (Exhibit #9). The locations of the three proposed structures have not changed, but the total floor area has been reduced from 67,930 to 67,505 square feet. The number of proposed on-site parking spaces has been increased from 340 to 350 parking spaces. The rooflines of the three proposed commercial structures vary from 24 to 34 feet in height, with architectural towers extending up to 43 feet above grade (Exhibit #4). Although the proposal no longer includes a Hughes supermarket, a food market is still anticipated to occupy the largest commercial unit.

The proposed project includes a seven-foot wide dedication of land along the site’s Pacific Coast Highway frontage. The dedication will widen the highway right-of-way for the addition of a 13-foot wide combined sidewalk and bicycle path that will connect to the existing sidewalks on either

side of the site. The construction of the sidewalk/bike path along Pacific Coast Highway would result in the filling of .02 acres (8,712 sq.ft.) of wetland habitat.

The most significant revision to the proposed project is the applicant's proposal to mitigate the project's impacts on the wetlands that occupy the site. The applicant has submitted a mitigation plan that would replace at a 2:1 ratio the .02 acres of wetland habitat that would be filled for the public sidewalk/bike path. The mitigation plan involves the preservation of approximately .01 acre of wetland on the site, and the installation of .04 acres of new wetland plants to replace the .02 acres of filled wetlands. The .04 acres of created wetland plant area, when planted around the preserved .01 acre, adds up to a .05 acre "wetland garden" (Exhibit #8). The proposed wetland native plant garden would be situated on the site between the Pacific Coast Highway sidewalk/bike path and a thirty foot wide landscaped buffer (Exhibit #9).

B. Wetland Habitat

As previously stated, a small wetland occupies the eastern portion of the project site (Exhibit #9). According to the applicant's consultants, the site supported wetlands until 1928 when the site and surrounding areas were filled (Exhibit #6). Chevron operated a fuel refinery on the entire site from 1928 to the mid 1970's. The refinery was then demolished. In 1993, the soils on the site were excavated and remediated in order to remove contaminants that were discharged from the refinery. The site was recontoured to its existing topography and a catch basin was graded at the southeast corner of the site which allows water to pond. There are no records of any coastal development permits ever issued by the City or Commission for the remediation or development of the site prior to 1998.

Currently, the site has a depression that collects drainage from the site and surrounding areas. During the past several winters the site has contained a pond that has attracted several bird species to the site. The EIR for the project lists observed bird species as: American Kestrel, Rock Dove, House Finch, European Starling, Western Gull, American Crow, Ring-billed Gull, Great Blue Heron, and Mallard Duck. The size of the pond varies in response to the levels of rainfall and evaporation during each season. In the past, Commission staff has observed pumps at the site pumping water out of the pond and into the storm drain.

As part of the EIR process, the applicant's consultant conducted its own wetlands determination and submitted it to the City. The consultant, Glenn Lukos Associates, reports that the site is partially inundated during the rainy season and that the site supports scattered native hydrophytes (wetland plants) including saltgrass (*Distichlis spicata*), alkali heath (*Frankenia salina*), heliotrope (*Heliotropium curassivicum*), pickle weed (*Salicornia virginica*), and alkali bulrush (*Scirpus maritimus*). The site also supports a population of southern tarplant (*Hemizonia parryi* var. *australis*) (Exhibit #6).

In June 1998, after visiting the project site, a California Department of Fish and Game staff member estimated that approximately .02 acres of "potential" wetland habitat exists on the site in the form

of scattered native hydrophytes (wetland plants) including saltgrass (*Distichlis spicata*), alkali heath (*Frankenia salina*), heliotrope (*Heliotropium curassivicum*), pickle weed (*Salicornia virginica*), and alkali bulrush (*Scirpus maritimus*). However, because of the wetland's small size, low biological productivity, location, and recent history, the California Department of Fish and Game is reticent to issue a determination that an "actual" wetland exists on the site, so it has been referred to as a "potential wetland" (Exhibit #7). Since June 1998, the wetland vegetation has grown and now covers approximately .03 acres.

However, the Coastal Commission's definition of a wetland is clear. The Coastal Commission relies on Section 30121 of the Coastal Act when determining what is a wetland. Section 30121 of the Coastal Act states:

"Wetland" means lands within the coastal zone which may be covered periodically or permanently with shallow water and include saltwater marshes, freshwater marshes, open or closed brackish water marshes, swamps, mudflats, and fens.

This is the definition upon which the Commission relies to identify "wetlands." The definition refers to lands "...which may be covered periodically or permanently with shallow water..." However, due to highly variable environmental conditions along the length of the California coast, wetlands may include a variety of different types of habitat area. For this reason, some wetlands may not be readily identifiable by simple means. The Commission's Statewide Interpretive Guidelines provide guidance for the sometimes difficult decision whether a site is a wetland. The Commission's Statewide Interpretive Guidelines state that the Commission also relies on the presence of hydrophytes and/or presence of hydric soils to make a wetlands determination. The presence of **any one of the three conditions** (water, hydrophytes or hydric soils) can result in a determination that a wetland is present.

Moreover, Section 13577(b) of the Commission's regulations specifically identifies the criteria for determining the precise boundary of a wetland for purposes of appeal under Section 30603 of the Coastal Act. **Section 13577(b)** states that:

Wetland shall be defined as land where the water table is at, near, or above the land surface long enough to promote the formation of hydric soils or support the growth of hydrophytes, and shall include those types of wetlands where vegetation is lacking and soil is poorly developed or absent as a result of frequent and drastic fluctuations of surface water levels, wave action, water flow, turbidity or high concentrations of salts or other substances in the substrate. Such wetlands can be recognized by the presence of surface water or saturated substrate at some time during each year and their location within, or adjacent to, vegetated wetlands or deep-water habitats.

In this case, the Commission determined at the August 13, 1998 opening of the public hearing for Long Beach LCP Amendment No. 2-98B that, according to the Commission's definition of wetlands, **a wetland does exist** on the site of the proposed development in SEADIP Subarea 29. The Commission's finding that a wetland exists on the site is based on the evidence provided by the

applicant and City, and quantified by the California Department of Fish and Game, that both water ponding and hydrophytes have been documented on the project site (See Exhibit #5 p.2). There is no dispute over the evidence that both water and hydrophytes have been found on the site. The only dispute is over the conclusion of whether the site contains a wetland.

The Commission resolves the dispute over the significance which should be attached the presence of water and hydrophytes on site consistent with the definition of wetland contained in Section 30121 of the Coastal Act and Section 13577(b) stated above. Consistent with those provisions, given the undisputed existence of hydrophytes, the Commission finds that **wetlands do exist** on the project site.

The wetland habitat area is situated on the site adjacent to the right-of-way of Pacific Coast Highway. This portion of the site is proposed to be dedicated as part of the highway right-of-way for the construction of a 13-foot wide combined public sidewalk and bicycle path. The construction of the sidewalk/bike path along Pacific Coast Highway will result in the filling of .02 acres (8,712 sq.ft.) of the wetland habitat.

The LCP, as amended by LCP Amendment No. 2-98B, allows filling of wetlands only if there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects, and for only the eight uses listed in Section 30233 of the Coastal Act:

- (1) New or expanded port, energy, and coastal-dependent industrial facilities, including commercial fishing facilities.
- (2) Maintaining existing, or restoring previously dredged, depths in existing navigational channels, turning basins, vessel berthing and mooring areas, and boat launching ramps.
- (3) In wetland areas only, entrance channels for new or expanded boating facilities; and in a degraded wetland, identified by the Department of Fish and Game pursuant to subdivision (b) of Section 30411, for boating facilities if, in conjunction with such boating facilities, a substantial portion of the degraded wetland is restored and maintained as a biologically productive wetland. The size of the wetland area used for boating facilities, including berthing space, turning basins, necessary navigation channels, and any necessary support service facilities, shall not exceed 25 percent of the degraded wetland.
- (4) In open coastal waters, other than wetlands, including streams, estuaries, and lakes, new or expanded boating facilities and the placement of structural pilings for public recreational piers that provide public access and recreational opportunities.
- (5) Incidental public service purposes, including but not limited to, burying cables and pipes or inspection of piers and maintenance of existing intake and outfall lines.

- (6) Mineral extraction, including sand for restoring beaches, except in environmentally sensitive areas.
- (7) Restoration purposes.
- (8) Nature study, aquaculture, or similar resource dependent activities.

Section 30233(a) of the Coastal Act prohibits the Commission from authorizing wetland fill unless it is one of the eight allowable uses. In the case, the proposed fill would result from the construction of a public sidewalk/bike path. In order to determine if the fill is an incidental public service allowable under Section 30233(a)(5) of the Coastal Act, the Commission must determine that the proposed fill is both incidental and for a public service purpose.

In this case, the proposed public sidewalk/bike path is incidental to an existing public service that is necessary because there is currently a gap in the public sidewalk where the project site fronts Pacific Coast Highway. The public sidewalk on the west side of Pacific Coast Highway now dead-ends at both ends of the project site. The proposed project includes the construction of a public sidewalk required by the City in order to provide an uninterrupted pedestrian accessway along the west side of Pacific Coast Highway. The sidewalk is proposed to be thirteen feet wide because the City plans to route a bicycle path on the sidewalk. The proposed bike route will eventually run along the west side of Pacific Coast Highway from the existing Second Street bike route to the San Gabriel River Bike path. The San Gabriel Bike path also provides access to Seal Beach.

The existing sidewalk fronting the properties adjacent to the proposed project will also be widened from the current ten-foot width to thirteen feet when the properties recycle. The future bike route connecting the Second Street Bike Path to the San Gabriel River Bike path passes only three parcels including the project site. The largest parcel is the Marina Hotel parcel located next to the project site. The City expects that parcel to be redeveloped in the near future. Therefore, the provision of the proposed thirteen-foot wide public sidewalk/bike path is a necessary public access component of the Pacific Coast Highway coastal transportation corridor.

Therefore, the Commission finds that the construction of the proposed public sidewalk/bike path is allowable fill that can be permitted to impact the wetlands on the project site if there is no feasible less environmentally damaging alternative, and where feasible mitigation measures have been provided to minimize adverse environmental effects. Because the proposed fill is a necessary public access link in an existing access corridor, there is no feasible less environmentally damaging alternative.

The applicant has proposed to mitigate the loss of wetlands by replacing the .02 acres of fill in the wetlands by adding .04 acres of new wetland habitat to the .01 acre of wetland habitat that will be preserved on the site. The proposed mitigation plan would replace the .02 acres of wetland habitat that would be filled for the public sidewalk/bike path at a 2:1 ratio. The proposed 2:1 ratio is acceptable in this case because of the wetland's small size, low biological productivity, location, and recent history. The mitigation plan involves the preservation of approximately .01 acre of wetland

on the site, and the installation of .04 acres of new wetland plants to replace the .02 acres of filled wetlands. The .04 acres of created wetland plant area, when planted around the preserved .01 acre, adds up to a .05 acre “wetland garden” (Exhibit #8). The proposed wetland native plant garden is situated on the site between the proposed Pacific Coast Highway sidewalk/bike path and a thirty foot wide landscaped buffer (Exhibit #9).

The proposed mitigation plan would avoid filling .01 acre of wetland, replace .02 acres of filled wetlands on the site at a 2:1 ratio, and be monitored for three years to ensure that the new wetland mitigation area becomes established. A special condition of approval requires the applicant to carry out the proposed wetland mitigation project in a timely manner, and consistent with the proposed mitigation plan (Exhibit #8). The wetland mitigation area is buffered from the highway by the proposed thirteen-foot wide sidewalk, and buffered from the project parking area by a thirty-foot wide landscaped area.

The recommended special conditions of approval adequately address and mitigate any potential adverse impacts to the environment caused by the proposed project. As conditioned above, the Commission finds that the proposed project is consistent with the LCP, as amended by LCP Amendment No. 2-98B. Therefore, as conditioned, the proposed project is the least environmentally damaging alternative.

C. Scenic Resources and Building Height

The scenic resources of coastal areas shall be considered and protected. The proposed project will change the visual qualities of the project area by placing three structures and a parking lot on a parcel that is currently vacant. The proposed project, however, has been designed in a manner that will protect and improve the visual qualities of the area. The site is currently fenced-off with a chain-link fence and overgrown with untended vegetation comprised predominantly of ruderal species typically associated with human disturbance (Exhibit #6).

In order to protect the scenic resources of coastal areas, the certified LCP contains building height limits, open space requirements, and a specific requirement to protect views to water areas. The applicable certified LCP standards for the site, contained in the SEADIP specific plan, state:

A.4. A minimum of thirty percent of the site shall be developed and maintained as usable open space....

A.5. (As modified by LCP Amendment No. 2-98B) The maximum height of buildings shall be 30 feet for residential and 35 feet for non-residential uses, unless otherwise provided herein. **In Subarea 29**, architectural features such as tower elements may be approved up to a height of 43 feet through the Site Plan Review process.

A.9. All development shall be designed and constructed to be in harmony with the character and quality of surrounding development....

A.12. Public views to water areas and public open spaces shall be maintained and enhanced to the maximum extent possible....

A.13. Adequate landscaping and required irrigation shall be provided to create a park-like setting for the entire area. A landscaped parkway shall be provided along all developments fronting Pacific Coast Highway....

The LCP requires that the proposed project improve and protect the visual qualities of this coastal areas by providing park like landscaping, attractive building designs, and by maintaining views to the Alamitos Bay Marina through the project site.

Lush landscaping and attractive building facades are proposed around all four sides of the proposed project (Exhibit #4). The parking lot landscaping plan includes landscaped islands, trees and shrubs. Twenty-foot wide setbacks are provided along all three street frontages. The revised project plan provides over 70,000 square feet of open space (28%) which is almost the required thirty- percent. The City granted the applicant an exception to the thirty- percent open space requirement. In this case, the minor exception to the open space requirement will not result in adverse impacts to coastal resources.

As part of the site plan review process, the City analyzed the views that exist across the site from Pacific Coast Highway to the waters of Alamitos Bay (Exhibit #10). Based on this analysis, the three proposed buildings were sited to maintain public views through the site from Pacific Coast Highway to the waters of Alamitos Bay (Exhibit #10). Three view corridors are provided across the site to Alamitos Bay.

The architectural design of the proposed project includes varied rooflines and towers that convey a nautical theme that is in character with the Alamitos Bay Marina (Exhibit #4). The rooflines of the three proposed commercial structures vary from 24 to 34 feet in height, with architectural towers extending up to 43 feet above grade (Exhibit #4). Only the proposed architectural towers exceed the height limit of the currently certified LCP. The proposed towers reach 43 feet but do not block views to the water or negatively affect scenic resources.

Therefore, the proposed project protects public views through the site to the ocean and will improve the visual quality of the site itself by providing attractive buildings and park like landscaping to replace the current vacant lot look. As proposed and conditioned by the City's site plan review process, the proposed project conforms to the scenic resource provisions contained in the certified LCP, with the exception of the proposed architectural towers which exceed the height limit but do not negatively affect scenic resources.

The proposed architectural towers may be permitted to exceed the height limit under the provisions contained in Long Beach LCP Amendment Request No. 2-98B. Long Beach LCP Amendment

Request No. 2-98B would modify the LCP to allow architectural features to exceed the 35-foot height limit in non-residential developments:

A.5. (As modified by LCP Amendment No. 2-98B) The maximum height of buildings shall be 30 feet for residential and 35 feet for non-residential uses, unless otherwise provided herein. **In Subarea 29**, architectural features such as tower elements may be approved up to a height of 43 feet through the Site Plan Review process.

Therefore, the Commission finds that the proposed project is consistent with the policies of the LCP as amended.

D. Retail Uses

The certified LCP does not currently list **retail uses or restaurants** as allowable uses on the project site. Long Beach LCP Amendment No. 2-98B would, however, add commercial retail uses and restaurants to the current list of commercial uses that may be permitted on the project site which is in Subarea 29 of SEADIP. The certified LUP designates SEADIP Subarea 29 as a "mixed use" land use district. The currently certified LCP list of permitted uses in Subarea 29 allows commercial uses, but only **commercial office, restaurant and commercial recreation uses**. Restaurant uses are currently permitted only south of Studebaker Road in Subarea 29. The proposed LCP amendment would allow retail uses and would delete the restaurant restriction to also allow restaurants on the north side of Studebaker Road in Subarea 29. The proposed project is located on the north side of Studebaker Road in Subarea 29.

The certified LUP calls for the development of the Alamitos Bay Marina area with a mixture of uses that will draw more people to the shoreline. There are no specific LUP policies that would discourage retail or other visitor-serving commercial uses on the project site which is located approximately 350 feet from the waters of the Alamitos Bay Marina, and across the street from the one of the marina's public parking lot (Exhibit #2). The proposed retail project and restaurant is consistent with the LUP's intent to attract more people to the coast. Long Beach LCP Amendment No. 2-98B would allow the development of the site with the restaurant and retail uses proposed as part of the Marina Shore shopping center. Therefore, the Commission finds the proposed uses consistent with the policies of the LCP as amended.

However, because the applicant has not yet proposed the final design for the proposed restaurant, the approval is conditioned to require the applicant shall submit final plans for the review and approval of the Executive Director. The restaurant plans shall conform with the site plan approved by this coastal development permit and shall not exceed 35 feet in height or contain more than 6,550 square feet in gross floor area. A drive-through restaurant is not permitted by this permit. Any modifications to the proposed restaurant shall be submitted to the Executive Director in order to determine if the proposed change shall require a permit amendment pursuant to the requirements of the Coastal Act and the California Code of Regulations.

E. Parking

The proposed project includes 67,505 square feet of commercial uses comprised primarily of retail uses and food services. The number of proposed on-site parking spaces has been increased from 340 to 350 parking spaces. The proposed parking ratio is 5.18 parking spaces per 1,000 square feet of floor area (1 space/193 sq.ft.). Therefore, the proposed parking supply exceeds the certified LCP's 5/1000 parking ratio required for shopping centers. The Commission's Regional Guidelines for Los Angeles County (1980) also require a 5/1000 parking ratio for shopping centers. Therefore, the Commission finds that the proposed project is consistent with the policies of the certified LCP.

F. Traffic

The certified LCP contains the following transportation and access policies:

1. Increase reliance on public transit.
2. Decrease reliance on automobiles.
3. Provide slightly more parking.
4. Increase pedestrian and bicycle access opportunities.

In addition, the applicable certified LCP standard for the site, contained in the SEADIP specific plan, states:

A.18. Developers shall improve and dedicate to the City certain streets, recreation areas and other public facilities necessary to support the proposed private development....

The EIR for the proposed project states that the proposed project will generate additional vehicle trips. According to the EIR, the proposed project will generate 396 peak PM and 206 peak AM vehicle trips with a total of 4,250 daily trips. The anticipated traffic has the potential to impact five intersections. These five intersections were analyzed for project impacts in association with existing traffic levels and projected year 2000 background traffic increases (Exhibit #11). The traffic study concludes that the proposed project will impact two intersections: Pacific Coast Highway at Westminster/Second Street and Pacific Coast Highway at Studebaker Road (Exhibit #11). The intersection of Pacific Coast Highway at Westminster/Second Street is currently at Level of Service (LOS) F without the projected increase. The LOS at the intersection of Pacific Coast Highway at Studebaker Road, directly adjacent to the project site, will decline from LOS D to LOS F if improvements are not undertaken as required by the City.

In order to mitigate the anticipated impacts to traffic, the City attached conditions to other local approvals which would require the applicant to dedicate land to widen the Pacific Coast Highway right-of-way and improve the right-of-way with a 100 foot south-bound deceleration/right-turn

pocket, a 100 foot north-bound left turn pocket, and a sidewalk/bike path (Exhibit #9). Additionally, the applicant is required to participate in the costs associated with the improvement of the two impacted intersections. Thus, as proposed to the Commission, the project would mitigate the significant adverse impacts which have been identified, consistent with the certified LCP.

It must be noted that the proposed project does not include the construction or extension of any new or existing roads. The EIR, in its analysis of traffic impacts, did not assume the future extension of Studebaker Road through the Los Cerritos Wetlands because of the uncertainty of such an extension. The City has clearly stated that the proposed project is not dependent on the extension of Studebaker Road, and the extension is definitely not part of this project.

G. Public Access and Recreation

The proposed project will not negatively impact public access or recreational opportunities. The project site is surrounded by existing development. The proposed project is located inland of the first public road and will not block physical access to the coast. The proposed public sidewalks and bike paths proposed around the perimeter of the site will improve public access to the coast for pedestrians and bicyclists (Exhibit #9). A certified LCP policy states: increase pedestrian and bicycle access opportunities.

The Alamitos Bay Marina is the closest recreational facility to the proposed project. The proposed project will not affect the marina's parking supply because adequate parking is provided on the project site. In fact, the proposed project will support the recreational activities of the marina by providing retail uses for marina visitors. The closest beach to the proposed project is located about one mile away in the City of Seal Beach. The proposed project will not affect access to the beach. Therefore, the Commission finds that the proposed project is consistent with the policies of the certified LCP.

H. Local Coastal Program

The de novo public hearing on the merits of the project uses the certified Local Coastal Program as the standard of review. The City of Long Beach Local Coastal Program (LCP) was certified by the Commission on July 22, 1980. The proposed project is located in SEADIP Subarea 29 which is included in the certified LCP.

As previously stated, the proposed project is in compliance with the certified LCP if the LCP is amended as recommended by LCP Amendment No. 2-98B. In order to ensure that the proposed project complies with the provisions of the LCP, as amended by LCP Amendment No. 2-98B, the applicant shall obtain a written statement of the Executive Director of the Coastal Commission confirming that LCP Amendment No. 2-98B has been effectively certified in accordance with

California Code of Regulations, Title 14, Section 13544. This evidence shall be provided prior to issuance of the coastal development permit.

I. Water Quality

The site is located within four hundred feet of the waters of the San Gabriel River Estuary and the waters of Alamitos Bay. Runoff from the site will be directed into the existing storm drain system that directs the runoff into the waters of the Bay and River. In order to minimize negative impacts on the marine environment that may result from runoff during the construction of the proposed project, the permit is conditioned to require the applicant to develop and submit for approval of the Executive Director an erosion control and siltation prevention plan which controls erosion from the construction site, and prevents silt from entering the storm drain system and ultimately coastal waters during the construction of the proposed project. The plan shall conform to the standards of the California Regional Water Quality Control Board and the U.S. Army Corps of Engineers and shall be implemented during construction of the proposed project.

The responsibility to protect the biological productivity and quality of coastal waters does not end after the proposed project is constructed. The permit is conditioned to require the applicant to develop and submit for approval of the Executive Director a drainage plan for the proposed shopping center and its parking areas that incorporates best management practices (BMP's) for reducing the volume of runoff and pollutants which leave the project site and enter the storm drain system. The drainage plan shall incorporate the following: landscaped buffers, catch basins to collect litter, trash racks or bars to filter runoff, grease and oil separators or filters, and provisions for regular scheduled cleaning of paved parking lot surfaces and catch basins. The drainage plan may include other measures as well. The permittee shall implement the approved drainage plan on an ongoing and permanent basis. As conditioned, the Commission finds that the proposed drainage for the project will comply with the certified LCP policy contained in SEADIP Section A.17.e (Storm Drainage).

J. California Environmental Quality Act (CEQA)

Section 13096 of the California Code of Regulations requires Commission approval of Coastal Development Permit to be supported by a finding showing the proposed development, as conditioned by any conditions of approval, to be consistent with any applicable requirements of the California Environmental Quality Act (CEQA). Section 21080.5(d)(2)(A) of CEQA prohibits a proposed development from being approved if there are feasible alternatives or feasible mitigation measures available which would substantially lessen any significant adverse effect which the activity may have on the environment.

The proposed development, only as conditioned, is consistent with the Chapter 3 policies of the Coastal Act. All significant environmental effects have been mitigated by conditions of approval. As conditioned, the proposed project will not have significant environmental effects for which

feasible mitigation measures or alternatives have not been employed consistent with CEQA. Therefore, the Commission finds that the project is consistent with the requirements of the Coastal Act to conform to CEQA.

End/cp